

Quarterly Report  
of the  
ATTORNEY GENERAL  
of  
ALABAMA



For The Period  
From October 1, 1959  
Through December 31, 1959  
VOLUME 97

MACDONALD GALLION, Attorney General



1960

QUARTERLY REPORT  
of the  
**ATTORNEY GENERAL**  
of  
**ALABAMA**

**For the Period**  
**From October 1, 1959**  
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**Volume No. 97**

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TO THE STATE, COUNTY, AND MUNICIPAL OFFICERS OF  
ALABAMA:

This Quarterly Report of the Attorney General of Alabama, which includes all official opinions rendered by the Attorney General from October 1, 1959, through December 31, 1959, is published in compliance with the provisions of Title 55, Section 228, Code of Alabama, 1940.

Under this section of the Code, I am required to send seven copies of this Quarterly Report to each judge of probate in the State and the judge of probate, in turn, is required to deliver one copy each to the clerk of the circuit court, the sheriff, the tax collector, the tax assessor, the county superintendent of education, and the deputy or county solicitor of his county. This section also requires that I send a copy of this report to each circuit solicitor and the chief executive officer of each incorporated municipality in the State.

The office of the Attorney General is anxious to render prompt and efficient service to the State, county, and municipal officials. If you have any suggestions to make regarding the improvement of the service, I shall be glad to hear from you.

Sincerely,

MACDONALD GALLION  
Attorney General

MACDONALD GALLION  
Attorney General

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Administrative Assistant

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# **OPINIONS**



October 8, 1959

Honorable W. W. Weatherford  
Judge of Probate and Chairman  
of Board of Revenue  
Franklin County  
Russellville, Alabama

Counties—Courthouses—Insurance—Road and Bridge Fund.

1. A county is not authorized to expend monies from its road, bridge and public buildings fund to pay premiums on insurance for its courthouse and courthouse furnishings.
2. The premiums for insurance on a courthouse and courthouse furnishings must be paid from the general fund of the county.

Opinion by Assistant Attorney General Gish.

Dear Sir:

Your request for an official opinion, bearing date of September 23, 1959, is as follows:

"As you probably know, the General Fund of counties are usually over-taxed, but in our county we have a small surplus in the Road, Bridge and Public Buildings Fund. We have before us a bill for insurance on the Courthouse Annex and contents and we are of the opinion that this insurance on the public buildings and furnishings owned by the county can be probably paid from the Road, Bridge and Public Buildings Fund.

"We shall appreciate your official opinion on whether or not this insurance can be paid from the Road, Bridge and Public Buildings Fund. We would appreciate an early reply on this as we are setting up our budget for the new year."

A county is authorized to insure its property against those losses specified in Title 12, Section 12, Code of Alabama 1940, as last amended by Act No. 750, Acts of Alabama 1957, page 1184.

Section 12, as amended, *supra*, authorizes a county governing body:

"To insure in solvent companies the courthouse, jail, machine shops and other buildings of the county against loss by fire and storm. To insure in solvent companies the trucks, tractors, machines, shovels, graders, equipment, vehicles and other personal property of the county against loss by fire and theft and against liability for damages to person and property, payment of premiums on such insurance coverage to be made from the general fund of the county except in regard to vehicles, items of equipment or other personal property used and employed exclusively in connection with the establishment, construction, repair and mainten-

ance of the public roads and bridges of the county, in which case payment of premiums on insurance coverage for such vehicles, items of equipment or other personal property may be made from the gasoline funds of the county. Payments heretofore made for these purposes are validated . . . . ”

You will note that under the above-quoted provision of Section 12, as amended, *supra*, the payment of premiums for insurance coverage on a courthouse and its furnishings must be made from the county's general fund.

Therefore, I am of the opinion that Franklin County may not expend monies from its road, bridge and public buildings fund to pay the insurance premiums to which your request refers.

Very truly yours,

MACDONALD GALLION  
Attorney General

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October 8, 1959

Hon. James S. Satterfield  
Tax Assessor  
St. Clair County  
Pell City, Alabama

Tax Assessors—Commissions.

Tax Assessors entitled to the commissions from taxes assessed by each of them.

There is no provision of law providing that the commissions shall be prorated according to the number of months each served as assessor.

Opinion by Assistant Attorney General Tiller.

Dear Sir:

Your request for an official opinion bearing date of September 2, 1959, is as follows:

“I anticipate a possible disagreement on division of the payment of commissions in the tax assessor's office this year.

“My predecessor, The Honorable Hoyt Hamilton, was elected Probate



Judge beginning January 20, 1959. I received my commission, term beginning January 13, 1959, to end of term in 1961. The responsibility of keeping the books and making the abstracts of this year on ad valorem taxes became my responsibility.

"My period of office of this year will be eight and one-half months, and leaving Judge Hamilton's at three and one-half months.

"I respectfully request of you an opinion as to the legal disposition of the money due to be paid to the tax assessor upon collection this coming October."

From the facts related above, I gathered that there were some assessments wholly made by Honorable Hoyt Hamilton and some wholly made by you and perhaps some work partly done by him and some partly done by you. The law appears to be that, in such cases as mentioned, he would collect for the assessments entirely made by him and you would collect for the assessments entirely made by you, and that where some work was done by each of you jointly in making the assessments, the commission paid therefor should be prorated. This appears to be both just and equitable.

It appears that you are of the opinion that because you served as Tax Assessor for eight and one-half months and he served for three and one-half months, the compensation therefor should be prorated according to time served. I could find no direct authority for that position. On the contrary, the authorities held that the one who makes the assessment is the one to receive the compensation therefor. See the following: 84 C.J.S. Section 384, page 732; *Stewart v. Sample*, 168 Ala. 270, 53 So. 182; *Crow v. Board of School Commissioners of Mobile County*, 228 Ala. 107, 152 So. 26; Biennial Report of Attorney General, 1934-36, page 721; Biennial Report of Attorney General, 1936-38, (stat) page 395; Quarterly Report of Attorney General, Vol. 60, page 19.

Very truly yours,

MACDONALD GALLION  
Attorney General

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October 9, 1959

Honorable Jeff D. Smith  
City Attorney  
City of Huntsville  
Huntsville, Alabama

Criminal Law—Licenses—Municipalities—Police.

1. A municipality may furnish fire and police protection to that part of its police jurisdiction lying in an adjoining county as well as that part lying in the county in which the municipality is situated.
2. Licenses may be levied and collected from those businesses situated in that part of the police jurisdiction of a municipality located in such adjoining county.
3. The recorder's court has jurisdiction to try a person for violating a city ordinance within that part of the municipal police jurisdiction lying within such adjoining county.
4. Police officers who arrest a felon within that part of a municipal police jurisdiction lying within such adjoining county may deliver said felon to the sheriff of said adjoining county.

Opinion by Assistant Attorney General Gish.

Dear Sir:

Your request for an official opinion, bearing date of September 17, 1959, is as follows:

"On September 30, 1959, the City limits of Huntsville will be extended within one mile of the Tennessee River towards the south. The Tennessee River is the boundary line between the Counties of Morgan and Madison in Alabama.

"Under the existing law, the police jurisdiction of the City of Huntsville will extend three miles from its boundary line and, of course, will extend over into Morgan County for approximately two miles.

"The City of Huntsville has requested that I obtain from you an official ruling on the following questions:

"1. Will the City of Huntsville, under the general laws of the state, be able to extend its fire and police protection for this two mile limit into Morgan County, Alabama?

"2. If such police and fire protection is so extended, will the filling

station and mercantile stores located in the covered territory in Morgan County be liable to the City of Huntsville for one half of the licenses taxed for engaging in such businesses.

"3. Should the police of the City arrest a person in the covered territory in Morgan County for violating its City Ordinance, should he be returned to Huntsville and tried in the City Court?

"4. Should the police detectives of the City apprehend a felon for committing a felony within the covered two mile space in Morgan County, would it be proper for said detectives or officer of the City to deliver said felon to the county authorities of Morgan County, Alabama, for prosecution?

Title 37, Section 9, Code of Alabama 1940, reads as follows:

"§ 9. POLICE JURISDICTION; TERRITORIAL.—The police jurisdiction in cities having six thousand or more inhabitants shall cover all adjoining territory within three miles of the corporate limits, and in cities having less than six thousand inhabitants, and in towns, such police jurisdiction shall extend also to the adjoining territory within a mile and a half of the corporate limits of such city or town. Ordinances of a city or town enforcing police or sanitary regulations and prescribing fines and penalties for violations thereof, shall have force and effect in the limits of the city or town and in the police jurisdiction thereof, and on any property or rights of way belonging to the city or town."

The Supreme Court of Alabama held in the case of *City of Birmingham v. Lake*, 243 Ala. 367, 10 So. 2d 24, that municipalities may exercise their police powers over areas within their general police jurisdictions and that county lines are not barriers to the exercise of such powers.

Title 37, Section 450, Code of Alabama 1940, reads as follows:

"§ 450. POWER TO MAINTAIN AND OPERATE FIRE DEPARTMENT.—Cities and towns may maintain and operate a volunteer or paid fire department, and may do any and all things necessary to secure efficient service. The council may delegate to commissioners by ordinance the power to control and manage such fire department under such rules and regulations as the commissioners or the council may prescribe."

Under Section 450, *supra*, the entire management, control and direction of a fire department is left to the discretion of the municipal governing body. See *State Ex rel. Mantell v. Baumhauer, et al*, 31 Ala. App. 27, 12 So. 2d 332. For this reason the City of Huntsville may extend its fire protection to that area comprising its police jurisdiction. Cf. *City of Birmingham v. Wilson*, 27 Ala. App. 288, 172 So. 292.

Therefore, your first question is answered in the affirmative.

Those licenses to which your second question refers are levied in the exercise of the police powers of a municipality pursuant to the provisions of Title 37, Section 733, Code of Alabama 1940, as amended by Act No. 502, General Acts 1943, page 477. *City of Birmingham v. Wilson*, supra; and *Franks v. City of Jasper*, 259 Ala. 641, 68 So. 2d 306.

County lines are not barriers to the exercise of the licensing powers of municipalities within their police jurisdictions. *White v. City of Decatur*, 25 Ala. App. 274, 144 So. 872; and Biennial Report of Attorney General, 1936-38, page 185.

Therefore, your second question is answered in the affirmative.

Under Title, Section 585, Code of Alabama 1940, recorders' courts are vested with jurisdiction in cases involving the violation of municipal ordinances within the police jurisdictions of their municipalities. Cf. Biennial Report of Attorney General, 1928-30, page 52. This power extends to that part of a municipal police jurisdiction lying in an adjoining county as well as that part lying in the county in which the municipality is located. Cf. *Wilson v. Hall*, (Ms. May 28, 1959), 112 So. 2d 443.

Therefore, your third question is answered in the affirmative.

Since the Circuit Court of Morgan County or other court of like jurisdiction in that County has jurisdiction to try persons accused of felonies committed in said County, I am of the opinion that a policeman of the City of Huntsville who arrests a felon in that part of the police jurisdiction of said City which lies in Morgan County, may deliver such felon to the Sheriff of Morgan County.

It should here be pointed out that, if a felony is committed within a quarter of a mile from the county line, the felon may be delivered to the Sheriff of either Madison or Morgan Counties. Title 15, Section 95, Code of Alabama 1940.

Therefore, your fourth question is answered in the affirmative.

Very truly yours,

MACDONALD GALLION  
Attorney General

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October 15, 1959

Honorable T. C. Almon  
Judge of Probate  
Morgan County  
Decatur, Alabama

Licenses—Manufacturing Plants

The liability of a certain plant for license under Title 51, Section 499, Code of Alabama 1940, as amended, discussed.

Opinion by Assistant Attorney General Loeb

Dear Sir:

Your request for an official opinion bearing date of August 19, 1959, is as follows:

"With the growth of the poultry industry in North Alabama, there has been erected in Morgan County, Alabama, by Poultry By-Products, Inc., a plant which purchases the feathers from the poultry dressing plant and the offal, such as the feet, entrails, and the heads, and this offal is cooked in large cookers. After this is processed, it is turned through a press, and the grease is pressed out and is sold, and what is left is sold as a protein feed to go into feed. The feathers are cooked in a cooker, and the same processed; then, they are dried in a dryer and run through a hammer mill, and when they are processed in this manner, this gives an ingredient which is sold to feed manufacturers to go into feed. If the price is too low, which is the case at this time, we then sell it to the fertilizer people, and it goes into fertilizer.

"It is apparent from the foregoing that Poultry By-Products, Inc., is processing feathers, feet, entrails and heads of chickens and not manufacturing.

"Please advise whether or not Poultry By-Products, Inc., would be liable for the activities hereinabove outlined under Section 499 of Title 51, Code of Alabama of 1940 as amended."

Receipt is also acknowledged of your letter of August 25, 1959, in which you cited several authorities which proved to be extremely helpful.

You inquire whether the operation of Poultry By-Products, Inc., is "manufacturing" and whether such operation is subject to the license imposed by Title 51, Section 499, Code of Alabama 1940, as amended.

I think there can be little doubt that the activities described in your

inquiry constitute a manufacturing process. *State v. Olan Mills, Inc.*, 258 Ala. 303, 63 So. 2d 796; *Curry v. Alabama Power Co.*, 243 Ala. 53, 8 So. 2d 521.

However, such manufacturing process does not fall within the purview of Section 499, *supra*. One of the basic rules of construction is that tax statutes and penal statutes are to be strictly construed and cannot be extended to cases not included within the clear import of their language. If the Legislature had intended for this license statute to include the type of operation engaged in by Poultry By-Products, Inc., it did not make it sufficiently clear to justify a holding to that effect. *Dumas v. State*, 17 Ala. App. 492, 86 So. 162; *Phoenix City v. Alabama Power Company*, 251 Ala. 403, 37 So. 2d 515; Quarterly Report of Attorney General, Vol. 55, p. 59.

In the case of *Collins Baking Company v. Glenn Harrison*, as License Inspector of Montgomery County, Alabama, Case No. 22378, Circuit Court Docket, Montgomery County, in Equity, Final Record 100, p. 223 et seq., Minutes No. 51, p. 289, decided February 7, 1952, the Court stated as follows:

"But, however broad that word (manufacture) may be, the statute here does not impose a license on all mills or factories (if a bakery could be considered as a mill or factory) but only those specifically included in the statute. Since the statute limits itself to those specifically included and since none should be included unless clearly so intended, it results that a bakery such as described in the bill is not included.

"The same conclusion was reached by the Circuit Court for the Tenth Judicial Circuit of Alabama in Equity in the case of Ray Rutland doing business as Rutland Bakery against Eugene B. Henry as Commissioner of Licenses of Jefferson County in its final decree in a declaratory judgment proceeding closely similar to the one involved here, the decree being dated June 13, 1950."

In view of the above, it is my conclusion that Poultry By-Products, Inc., would not be liable for the tax levied by Section 499, *supra*.

Very truly yours,

MACDONALD GALLION  
Attorney General

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October 16, 1959

Hon. Winston Stewart  
Executive Secretary  
Association of County Commissioners of Alabama  
17 South Union Street  
Montgomery 4, Alabama

## Licenses—Motor Vehicles—Time—Sunday Laws.

1. Under Title 51, Section 710, Code of Alabama 1940, as amended, all motor vehicle licenses expressly become due on October first of each year, and delinquent on November sixteenth next thereafter, and the delinquent date cannot be extended even where November fifteenth happens to fall on Sunday.

Opinion by Assistant Attorney General Burton.

Dear Sir:

Your request for an official opinion bearing date of September 18, 1959, is as follows:

"I will appreciate your opinion on the following:

"Motor vehicle license tags are due October 1st of each year and delinquent after November 15th.

"When the 15th of November falls on Sunday does this give the purchaser through the 16th without being delinquent?

"Since November 15th of this year falls on Sunday I will appreciate your usual prompt attention to this matter."

The answer to your question is in the negative.

Under Title 51, Section 710, Code of Alabama 1940, as amended, all motor vehicle licenses expressly become due on the first day of October of each year, "and are delinquent on November 16 (sixteenth) next thereafter."

The only difference in the provisions of Section 710, *supra*, and the provisions of Section 835 (c), as amended, and 851, of Title 51, Code of Alabama 1940, in this respect is that these Sections make the delinquent date for licenses other than motor vehicle licenses November first of each year.

In construing Sections 835(c), as amended, and 851, *supra*, under very

similar circumstances, this office, in Quarterly Report of the Attorney General, Vol. 53, page 51, did so as follows:

"It is clear from the express wording of these statutes that licenses within their purview are due on October first of each year and are delinquent on the first day of November thereafter. See *State on Behalf of Henry, Commissioner of Licenses, v. State ex rel. Hotel Tutwiler Operating Company*, 230 Ala. 657, 162 So. 365, and *McDowell v. Henry*, 238 Ala. 663, 193 So. 108.

"In my opinion, the fact that October thirty-first, the last day of the grace period for the payment of such licenses, falls, as it does in 1948, on Sunday, does not alter the situation.

"The rule of computing time (Title 1, Section 12, Code of Alabama 1940) is not here applicable, as the above-cited statutory provisions do not prescribe a certain number of days during which licenses may be paid, but, on the contrary, fix a date on which they become due and payable (October first), and a later date on which they become delinquent (November first). Cf. Quarterly Report of Attorney General, Volume 26, page 9, and authorities therein cited, wherein it was held that although February first, the last day under the statute for the payment of poll taxes, falls on a Sunday in a given year, a tax collector has no authority to receive poll taxes on the following Monday, February Second. See, also, 52 American Jurisprudence, Time, Sections 20 and 21.

"Consequently, I advise you that the fact that October thirty-first, the last day of the grace period for the payment of licenses within the purview of the above-cited statutory provisions, falls on Sunday in a particular year does not operate to extend the date of delinquency." (Emphasis supplied)

The same ruling would seem to be equally as applicable to motor vehicle licenses, the only difference being that by law those licenses become delinquent on November sixteenth of each year. Thus, the time cannot be extended because November fifteenth of the current year falls on Sunday.

Very truly yours,

MACDONALD GALLION  
Attorney General



October 22, 1959

Honorable S. K. Adams  
Judge of Probate  
Dale County  
Ozark, Alabama

Airports—Counties—Gasoline Fund

1. A county may expend its funds, derived from the tax levied on aviation fuel, by Title 51, Section 647, Code of Alabama 1940, as amended, to help build or maintain an airport in a municipality.
2. A county may not expend its funds, derived from the tax levied on gasoline other than aviation fuel, by Title 51, Section 647, Code of Alabama 1940, as amended, to help build or maintain an airport in a municipality.

Opinion by Assistant Attorney General Gish.

Dear Sir:

Your request for an official opinion, bearing date of September 25, 1959, is as follows:

"I would like to have your opinion on the following question.

"Can a County spend gasoline tax money to help build or maintain an airport in the City of Ozark?"

The gasoline tax to which your request refers is Dale County's share of the tax levied by Title 51, Section 647, Code of Alabama 1940, as amended by Act No. 44, Acts of Alabama 1955, page 73.

Section 647, as amended, *supra*, reads in part as follows:

" . . . The revenue arising from the sale of gasoline, as herein defined for aviation fuel, shall be used exclusively for the purpose of paying the cost of acquiring, engineering, construction, improvement and maintenance of existing and proposed airports and other air navigation facilities within the state, for the payment of the salary of the State Director of Aeronautics, the salaries of other employees of the Alabama Department of Aeronautics, and for the payment of other administrative and aeronautical expenses of the Alabama Department of Aeronautics and for the further purpose of creating a sinking fund for the payment of the interest and retirement of the principal of all bonds which may be here-

after lawfully issued, sold and delivered for funds to be used exclusively of the enumerated purposes. All gasoline or any substitute therefor, sold or delivered to any airport within the state for use as fuel to propel airplanes, is hereby classified as aviation fuel . . . . ”

Section 647, as amended, *supra*, provides that the counties of this State which own or operate public airports where aviation fuel is sold or delivered shall receive a share of the tax levied on such aviation fuel.

Therefore, I am of the opinion that Dale County may expend its funds derived from the gasoline tax on aviation fuel to help build or maintain an airport in the City of Ozark.

The Constitution of Alabama 1901, Amendment 93, reads in part as follows:

“No moneys derived from any fees, excises, or license taxes, levied by the state, relating to registration, operation, or use of vehicles upon the public highways except a vehicle-use tax imposed in lieu of a sales tax, and no moneys derived from any fee, excises, or license taxes, levied by the state, relating to fuels used for propelling such vehicles except pump taxes, shall be expended for other than cost of administering such laws, statutory refunds and adjustments allowed therein, cost of construction, reconstruction, maintenance and repair of public highways and bridges, costs of highway rights-of-way, payment of highway obligations, the cost of traffic regulation, and the expense of enforcing state traffic and motor vehicle laws . . . . ”

Amendment 93, *supra*, applies to the tax on gasoline used for propelling vehicles upon the public highways.

Section 647, as amended, *supra*, limits the use of the funds derived from the tax on all gasoline, except that classified as aviation fuel, to the “construction, improvement, maintenance and supervision of highways, bridges and streets.” Quarterly Report of Attorney General, Vol. 89, page 16. See also opinion to Honorable Winston Stewart, Executive Secretary, Association of County Commissioners of Alabama, under date of June 18, 1959.

Therefore, I am of the opinion that Dale County may not expend its funds derived from the tax on gasoline other than that classified as aviation fuel to help build or maintain an airport in the City of Ozark. See Quarterly Report of Attorney General, Vol. 78, page 48.

Very truly yours,

MACDONALD GALLION  
Attorney General

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October 30, 1959

Mrs. Mary J. Thompson  
Executive Secretary  
Real Estate Commission  
State of Alabama  
C A P I T O L

## Real Estate—Licenses

1. Officer or regular employee of corporation dealing in property owned solely by corporation is exempt from payment of license.
2. Individuals forming two or more corporate entities must secure a broker's license for each separate entity.
3. A real estate salesman is authorized to operate out of his broker's principal place of business or out of any branch office established by his broker.
4. Failure of real estate broker and salesman to secure transfer of salesman's license under facts is in violation of Act No. 422, Acts of Alabama 1951, page 745.
5. Under the facts stated the failure to secure license for person employed by real estate broker subjects both broker and employee to penalties under Act No. 422, Acts of Alabama 1951, page 745.

Opinion by Assistant Attorney General Coe.

Dear Mrs. Thompson:

Your request for an official opinion bearing date of August 24, 1959 is as follows:

"The Commission respectfully requests an opinion of your office as to the following:

"The Alabama Real Estate License Law of 1951, Act No. 422, Regular Session, 1951, approved August 15, 1951, as amended, in part reads as follows:

"Section 3. DEFINITIONS. (a) As used in this Act, unless the context requires a different meaning, 'person' includes partnerships, associations, firms, and corporations; 'real estate broker' includes any person who, for a fee, commission, or other valuable consideration, or who with the intention or expectation of receiving or collecting a fee, or commission, or other valuable consideration, lists, sells, purchases, ex-

changes, rents, leases, options, or auctions real estate or the improvements thereon, or negotiates or attempts to negotiate any real estate transaction, advertises or holds himself out as engaged in the real estate business; 'real estate salesman' means a person employed or engaged by or on behalf of a licensed real estate broker to do any act or deal in any activity regulated by this Act, for compensation or otherwise. (b) Provided, however, this Act shall not be applicable (1) To any person, or to regular employees thereof, who, as a bona fide owner or lessor, performs any act with reference to property owned or leased where such acts are performed in the regular course of, or as an incident to the management of such property and the investment therein . . . .'

"In consideration of the above cited pertinent provisions of the Law and all other provisions of the Law as contained in the attached Copy of the 1951 Alabama Real Estate Law, as amended, and Regulations and/or Rulings of the Commission printed on back of Copy of the 1951 Real Estate Law, respectfully request an opinion on the following questions:

"1. May an unlicensed salesman of a corporation, who is not an officer of that corporation, enter into contracts for the sale of real estate owned by said corporation, said contracts being executed in the name of the corporation, without violation of the 1951 Alabama Real Estate License Law, where said employee is compensated by the corporation based solely on sales made and further, said employee does not hold himself out to the general public as available for hire on a commission basis as a real estate agent?

"2. Can a duly qualified officer of a corporation sell real property belonging to the corporation and perform any of the acts specified in Section 3 of the 1951 Alabama Real Estate License Law in the name of the corporation without a license from the Alabama Real Estate Commission?

"3. If Jones is a real estate salesman licensed to operate under Broker John Doe doing business as Liberty Sales, Inc., would not all activities of salesman Jones have to be done in the name of, through and under Broker John Doe doing business as Liberty Sales, Inc.?

"4. If Broker John Doe is licensed as John Doe, Broker, doing business as Liberty Sales, Inc., and Jones is licensed as a salesman to operate under Broker John Doe doing business as Liberty Sales, Inc., would not salesman Jones be in violation of the Real Estate Law if he acted as salesman for and performed any of the acts specified in Section 3 of the 1951 Real Estate Law for and in the name of South Sales, Inc., which is a corporation of which Broker John Doe is an officer, or in the name of Perry & Company, which is a company or firm personally owned by Broker John Doe? (Section 3 and subsection (n) of Section 12 of the Law.)

"5. A broker being required to have a branch office license for each

place of business in addition to his principal place of business (subsection (e) of Section 10 of 1951 Real Estate License Law, as amended) would not a salesman licensed to operate out of the principal place of business of his broker be required to secure a salesman's license for the branch office in order to operate out of the branch office place of business of the broker if he desired to operate out of both the principal place of business and the branch office place of business of said broker? (Section 9 and subsection (a) and (e) of Section 10, 1951 Alabama Real Estate License Law and Regulation and/or Ruling of the Commission dated January 20, 1955, page 23 of the attached copy of the 1951 Real Estate License Law.

"6. If answer to question 5 above is in the affirmative, and salesman Jones holds license to operate out of Broker John Doe's principal place of business located in Montgomery and also license to operate out of Broker John Doe's branch office located in Mobile, and in fact operates out of another branch office of said broker located in Huntsville for which he does not hold a salesman's license to so operate, and refuses to secure license to operate out of the broker's branch office in Huntsville or secure the transfer of the license from the Mobile branch office, to the Huntsville branch office, is not said salesman in violation of the Law by operating out of the Huntsville branch office without a license to so do?

"7. Broker John Doe licensed to do business as Liberty Sales, Inc., runs newspaper advertisement under the name, style and/or designation of 'Liberty Sales, Inc.', offering certain real property for sale, and in said newspaper ad is carried the names of certain unlicensed persons that could be contacted with reference to the property and/or specifying that said persons would be on the site of the property, said persons not being licensed as salesmen to operate under said broker, nor being licensed as a broker to operate in the name of Liberty Sales, Inc. Could not the general public infer from such newspaper ad that said persons were holding themselves out to be contacted with reference to the property offered for sale in the ad, to show the property, give information in regard thereto, or to perform any act or service which would aid, abet and assist in negotiating or attempting to negotiate a real estate transaction? Would not broker Doe doing business as Liberty Sales, Inc. and so licensed, be in violation of the 1951 Alabama Real Estate License Law for such newspaper advertisement and using and/or having in his employ unlicensed persons engaging in the real estate business? Would not the unlicensed persons whose names appeared in the newspaper ad be in violation of the 1951 Alabama Real Estate License Law?

"8. Is not a licensed broker in violation of the 1951 Alabama Real Estate License Law by employing and using as a salesman a person not licensed to operate as salesman under him, but in fact at the time actually licensed as a salesman to operate under another licensed broker, and continuing to employ and use such person over a long period of time, many months, and failing or refusing to secure the transfer by

the Commission of said salesman and his license to said broker's employ? Is not the salesman involved in the question above in violation of the 1951 Alabama Real Estate License Law by working as a salesman for a licensed broker other than the broker under whom he is licensed by the Commission?

"9. Can a licensed real estate broker employ an unlicensed person to hold and/or assist in holding what is called 'open-house' on real property offered for sale by said broker, and said unlicensed person greeting interested persons on the site of the property, showing the property, giving information in regard thereto, assisting in filling out agreements to purchase, accepting agreements to purchase, and said unlicensed person receiving remuneration, a fee, commission, or other valuable consideration for such activity? Would not such activity on part of said unlicensed person require license under the provisions of the 1951 Alabama Real Estate License Law?"

In answering your first inquiry reference is made to an opinion of this office rendered to Honorable Virgis M. Ashworth, House of Representatives, dated August 13, 1959, wherein the identical question was presented. From that ruling the following is quoted:

"I am of the opinion that your inquiry is to be answered in the affirmative.

"Section 3(b) of Act No. 422, Acts of Alabama 1951, provides in part:

"'Provided, however, this Act shall not be applicable (1) To any person, or to regular employees thereof, who, as a bona fide owner or lessor, performas any act with reference to property owned or leased where such acts are performed in the regular course of, or as an incident to the management of such property and the investment therein . . . '

"Section 3(a) of Act No. 422, supra, defines 'person' to include partnerships, associations, firms and corporations, unless the context requires a different meaning.

"In Biennial Report of Attorney General for 1928-1930, Page 23, this office held that the above sections exempt a person, employed by a company, co-partnership or corporation owning and dealing only in its own property, from payment of license. See also Biennial Report of Attorney General 1928-1930, Page 180 and *Strumpf v. State*, 31 Ala. App. 409, 18 So. 2d 104."

The above rule is also applicable to your second inquiry. As set out in *Strumpf v. State*, supra, an officer of a corporation selling real property belonging to the corporation would be exempt from license if (1) He is a regular employee of the corporation performing acts in the regular course of, or as an incident to the management of the corporate property; (2) He is dealing in property owned solely by the corporation.

In answer to your third and fourth inquiries this office has held that a real estate salesman is licensed to operate only under a particular real estate broker. Opinion to Mary J. Thompson, Executive Secretary, Alabama Real Estate Commission, under date of July 16, 1957. This office is of the opinion that where certain individuals form two or more corporations to engage in the real estate business, such individuals must secure a broker's license in the name of each separate entity. Thus, a salesman who holds a license under broker John Doe doing business as Liberty Sales, Inc., a corporation, would be in violation of Act 422, supra, if the salesman engaged in real estate transactions for and in the name of South Sales, Inc., a corporation, of which broker John Doe is an officer, without first securing a transfer of his salesman's license.

It is my opinion that your fifth and sixth questions must be answered in the negative. Referring again to Opinion to Mary J. Thompson, Executive Secretary, Alabama Real Estate Commission, under date of July 16, 1957 in which this office held:

" . . . when a person is licensed as a real estate salesman to operate under a particular broker, he may operate out of the broker's principal place of business or out of any branch office established by said broker."

The answer to your eighth inquiry is clearly in the affirmative. Section 9(a), Act 422, supra, provides in part:

" . . . . Prompt notice in writing, within ten days, shall be given to the Commission by any real estate salesman of the change of employer, and request for transfer from the licensed broker into whose employ the salesman is about to enter, and a new license shall thereupon be issued by the Commission to such salesman for the unexpired term of the original license, upon the return to the Commission of the license previously issued . . . . It shall be unlawful for any real estate salesman to perform any of the acts contemplated by this Act either directly or indirectly after his employment has been terminated . . . . "

Section 5(b), Act 422, supra, provides:

"(b) Each real estate broker must sign a statement to the effect that he accepts the responsibility for the actions covered by this Act of any and all salesmen licensed under him . . . . "

Section 6(d) of Act 422, supra, provides:

" . . . The (salesman's) application shall be accompanied by a sworn statement by the broker in whose employ the applicant desires to enter, certifying that, in his opinion, the applicant is honest, trustworthy of good reputation, and recommending that the license be granted to the applicant and accepting responsibility for the actions of such salesman as set out in Section 5 of this Act."

It is my opinion that the above excerpts clearly show that the activity

defined in your eighth inquiry is in violation of Act 422, supra, both as to the real estate salesman and the broker.

Your seventh and ninth questions asks: Is a licensed broker in violation of Act 422, supra, where said broker advertises and/or actually employs unlicensed persons as salesmen to operate under said broker. Is the unlicensed salesman in violation of said act?

Your attention is again directed to Section 5(b), Act 422, supra, which provides in substance that a real estate broker must accept the responsibility for the acts of the salesman licensed under him. Moreover, Section 6(d) of Act 422, supra, provides that the broker must state under oath that the salesmen in his employ are honest, trustworthy and of good reputation. These acts on the part of the broker must accompany the salesman's application for license. Thus, in my opinion, the clear intent of Act 422, as set out above, is that a broker shall not employ an unlicensed salesman; nor shall a broker advertise the name of an unlicensed salesman as being in his employ.

In conclusion, I am of the opinion that a person employed by a real estate broker to greet interested persons on the site of the property; to show the property; to give information in regard thereto; to assist in filling out agreements to purchase and to accept agreements to purchase, is acting in the capacity as real estate salesman and as required by Section 2 of Act 422, supra, must be licensed as such.

Very truly yours,

MACDONALD GALLION  
Attorney General

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November 2, 1959

Hon. Huey D. McInish  
County Attorney  
Porter-Farmer Building  
Dothan, Alabama

Convicts—Counties—Prisoners—Hard Labor.

1. County hard labor convicts may be used in the maintenance and upkeep of State lakes and parks within the respective counties.
2. County hard labor convicts may be used upon all works and projects upon which the county is authorized to expend funds or upon which it has an obligation under law to develop, improve or maintain.



Opinion by Assistant Attorney General Webb.

Dear Sir:

Your request for an official opinion bearing date of October 27, 1959, is as follows:

"The Houston County Board of Revenue and Control has requested an Attorney General's opinion on the following:

"Is it permissible for county prisoners who have been sentenced to hard labor for the county to be worked on State projects such as State Parks, with particular reference to Chattahoochee State Park near Gordon in Houston County, Alabama?

"The above request was made by motion duly passed by the Board of Revenue and Control at their regular meeting on October 26, 1959. An early reply will be appreciated."

The answer to your question is in the affirmative. This office has previously held that county hard labor convicts may be worked on county public works by virtue of Title 45, Section 100, Code of Alabama 1940, as amended by Act No. 307, Acts of Alabama 1955, page 705. More specifically, this office held:

" . . . this section permits the use of county hard labor convicts upon all works and projects upon which the county is authorized to expend funds or which it has an obligation under the law to develop, improve or maintain . . . " Quarterly Report of Attorney General, Vol. 88, page 31.

We have further held that counties have the authority under Title 12, Section 12(22), Code of Alabama 1940, as amended by Act No. 344, Acts of Alabama 1945, page 560, and its predecessor, to expend funds for the establishment of State lakes and parks. Quarterly Report of Attorney General, Vol. 49, page 12 and page 37, and Biennial Report of Attorney General, 1934-36, page 181.

It is, therefore, my opinion that county hard labor convicts may be used in the maintenance and upkeep of State lakes and parks within the respective counties.

Very truly yours,

MACDONALD GALLION  
Attorney General

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November 5, 1959

Honorable Charles E. Rentz  
Clerk of the Circuit Court  
Marengo County  
Linden, Alabama

Costs and Fees—Clerks of Circuit Court—Probation Docket

1. The clerk of the circuit court is still entitled to the fee of one dollar allowed him by Title 42, Section 25, Code of Alabama 1940, as amended, for his services in keeping a probation docket, in addition to the set fees allowed him by Act No. 543, Acts of 1957, page 764 and Act No. 741, Acts of 1957, page 1170.

2. If the fee of one dollar mentioned above is not paid by the probationer, it becomes a proper claim upon the State Comptroller, to be paid by him out of funds appropriated by Act No. 558, Acts of 1957, page 777, for the payment of court costs.

Opinion by Assistant Attorney General Hardin

Dear Sir:

Your request for an official opinion bearing date of August 17, 1959, is as follows:

"Please advise if under Title 42, Section 25 of the 1940 Code of Alabama, if the \$1.00 probation fee is chargeable to and paid by the State Comptroller in probation cases wherein the costs are not paid by the defendant and cost bill is forwarded to the State Comptroller for payment?

"Attorney General's Opinion, Vol. 50, page 39, issued January 12th, 1948, clearly states that it is paid by the State when not paid by the probationer.

"Hon. John Graves, State Comptroller refuses to pay said probation fee since same is not specially listed in Title 45, Section 69, 1940 Code of Alabama.

"Our new fee system did not amend Title 42, Section 25, which clearly states that this fee is payable by the state, neither was a Probation fee specifically mentioned in Title 45, Section 69, amended, September 18, 1957, which fees became effective January 20th, 1959, nor was it specifically set out in Title 45, Section 69, which we operated under prior to January 20, 1959. It seems to me since no change has been made in the word meaning of the above Titles and Sections mentioned, that this is an item to be paid by the State now as was payable by the State prior to January 20th, 1959."

Title 42, Section 25, Code of Alabama 1940, as last amended by Act No. 750, Acts of 1953, page 1013, provides, in part, that:

" . . . The clerk of the court, in addition to the usual fees now allowed him by law in criminal cases, shall be allowed a fee of one dollar in each case for his services in keeping a probation docket and one dollar for forwarding the probation file in duplicate to the board of pardons and paroles, all of which fees if not paid by the probationer shall be payable out of the funds of the state department of corrections and institutions as other such court costs are now paid."

A former opinion of this office found in Quarterly Report of Attorney General, Volume 50, page 39, concludes that the circuit clerk is entitled to the fee of one dollar provided for by such statute for keeping a probation docket. However, such opinion further concludes that the portion of such statute allowing a fee of one dollar for forwarding the probation file in duplicate to the Board of Pardons and Parole is inoperative and hence would not be a proper charge for the clerk. This opinion thus holds that the circuit clerk is entitled to a fee of one dollar under the above statute and that, when not collected from the probationer, this fee should be paid from State sources. Such, clearly was the law until the advent of the new system of costs and fees applicable to the circuit clerks of this State which became effective January 20, 1959. To answer your inquiry, it is necessary that I determine whether or not the institution of this new fee system served to deprive the circuit clerk of the one dollar fee mentioned above.

The system of costs and fees applicable to the services of the circuit clerk in criminal cases is provided for by Acts No. 543 and 741, Acts of 1957, found at pages 764 and 1170, respectively. The first of these Acts amends Title 11, Section 89 of the Code of Alabama 1940 and provides for a fixed or set fee for the circuit clerk in criminal cases in the circuit court in the amounts there set out. Act No. 741, supra, provides for a fixed amount of costs for clerks of the circuit courts who are ex officio clerks of inferior courts in criminal and quasi criminal cases determined in such inferior courts. The provisions of each of such Acts became effective with the commencement of the present term of office of the incumbent circuit clerk which was January 20, 1959. From my examination of each of these Acts I find no indication that they in anywise sought to amend or repeal the provisions of Title 42, Section 25 of the Code of Alabama 1940, as amended, supra.

I have likewise considered the provisions of Act No. 542, Acts of 1957, page 762, which Act amends Title 45, Section 69, of the Code of Alabama 1940 and makes provision for those items of costs which will be paid by the State criminal cases under the conditions there set out. Here again, I find no indication that Act No. 542, supra, intended to amend or repeal the provisions of Title 42, Section 25, supra. I do not find that the particular fee of one dollar, provided for by Title 42, Section 25, supra, is mentioned within Act No. 542, supra, nor was such fee mentioned within Title 45, Section 69, Code of Alabama 1940, as it existed prior to amendment by Act No. 542, supra. Consequently, I am of the opinion, that there was no purpose or intent associated

with the passage of Act No. 542, *supra*, to amend or repeal the provisions of Title 42, Section 25, *supra*.

In view of the above, I am of the opinion that the one dollar fee provided for by Title 42, Section 25, *supra*, for the services of the clerk in keeping a probation docket is a fee which is allowed to him in addition to the usual fees allowed him by law for his services in criminal cases, and that such fee is still payable to him, in proper cases, in addition to a set fee allowed him for his services by Acts 543 and 741, *supra*. I base such conclusion upon the fact that the services of the clerk for which this one dollar fee is allowed are rendered in a proceeding separate and apart from the trial of the accused. It is my opinion that the set fees allowed by Acts No. 543 and 741, *supra*, are for the services of the clerk in the trial of the criminal case concerned. The fee allowed him by Title 42, Section 25, *supra*, is a separate fee in addition to the above and allowed him for his services should there be a probation hearing with regard to such accused. I feel that the clerk would be entitled to the one dollar fee authorized by Title 42, Section 25, *supra*, and that if such fee is not paid by the probationer, it would be paid out of the State funds.

As regards the provisions of Act No. 542, *supra*, amending Title 45, Section 69, *supra*, I feel that this Act, too, relates to the usual fees allowed the circuit clerk and other officers for their services in those proceedings related to the trial of the accused. I do not believe that this amended statute purports to include within its provisions all fees which might be allowed the officers of the court by other distinct statutes, such as Title 42, Section 25, *supra*.

To conclude, it is my opinion, that in a proper case the circuit clerk would be entitled to the one dollar fee allowed by Title 42, Section 25, *supra*, for his services in keeping a probation docket. I also feel that if such item of cost is not paid by the probationer, claim may be made upon the State Comptroller, in view of the fact that Act No. 558, Acts of 1957, page 777, now requires the State Comptroller to make payment of court costs out of the funds there appropriated of those items previously paid from funds of the Board of Corrections. I, therefore, feel that you may submit claim for such item of cost to the State Comptroller and that he should pay same to you from the State funds at his disposal.

Very truly yours,

MACDONALD GALLION  
Attorney General

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November 6, 1959

Hon. Brunner Nix  
Sheriff, Walker County  
Jasper, Alabama

Sheriffs — Extradition — Nonsupport — Juveniles — Insane Persons — Costs and fees.

1. Extradition costs in nonsupport cases discussed generally.
2. Costs of removal of juveniles discussed generally.
3. Extradition not authorized for investigation of an offence only.
4. Fees of Sheriff for fingerprinting persons taken into custody discussed generally.

Opinion by Assistant Attorney General Hardin.

Dear Sir:

Your request for an official opinion bearing date of October 5, 1959, is as follows:

"I would appreciate a ruling on the following:

"1. When I have to send out of county or state for a person on a Non-Support warrant, am I entitled to receive \$8.00 for each of the two guards which go after same?

"2. When removing Insane or Juvenile persons from out county or state, am I entitled to \$8.00 for each of two guards which go after same?

"3. Am I entitled to \$1.00 for fingerprinting on nol prossed cases?

"4. If a person is extradited from another state for investigation of a felony by the order of the court, am I entitled to receive payment for the expense incurred.

"As you probably realize, I am on a fee basis and therefore a ruling on the above mentioned is important to me."

Your first inquiry relates to a situation wherein a person is extradited from another state, or removed from another county in a nonsupport case. You wish to know whether or not there would be an allowance of \$8.00 for each of the guards who participated in such removal.

I do not believe that such guards would be entitled to a fixed sum of \$8.00, as such. As I understand our statutes relating to the extradition or re-

removal of a person charged with nonsupport, such may be accomplished in two ways. Title 34, Section 101, Code of Alabama 1940, provides that the Judge of Probate, or of the Juvenile or Domestic Relations Court may issue an order requiring that any person so charged be apprehended and brought back to the county having jurisdiction of the case, in accordance with the law providing for the apprehension and return to this state of fugitives from justice. This statute further provides that, in the event such order is issued and such removal made thereunder, all costs incident to such extradition shall be paid by the county in which such offense shall have been committed by appropriation made by the county governing body thereof. It would be my opinion that should the Judge issuing such order authorize or allow the use of guards in such removal that such guards might be paid a reasonable compensation for their services. This would not necessarily be at the rate of \$8.00 per day, although the county might determine this to be a reasonable rate. The cost of such guards would be claimed of the county and paid by it. See Quarterly Report of Attorney General, Vol. 56, page 77.

The other means of extradition of persons charged with nonsupport appears to be that set out in Act No. 879, Acts of 1951, page 1515, as amended by Act No. 823, Acts of 1953, page 1107. These provisions are now codified as Title 34, Section 109 (Pocket Supplement), Code of Alabama 1940, and provide that the Governor of this state may demand from the Governor of any other state the surrender of any person found in such other state who is charged in this state with the crime of failing to provide for the support of any person in this state. Act No. 879, as amended, *supra*, further provides that the provisions for extradition of criminals, not inconsistent with such act, shall apply to any such demand. The provisions of our law applicable to criminal extradition are set out in Title 15, Section 48-75, Code of Alabama 1940, as amended. It is provided by Section 72 of such statutes that if the punishment of the crime with which such person is charged be a felony the expenses of extradition will be paid by the state. If not a felony, then by the county in which the offense is alleged to have been committed. In Section 90 of Title 34 of the Code of Alabama 1940, we find the offense of nonsupport defined as a misdemeanor. Consequently, it is my opinion, that should a person be extradited from another state by means of the Governor's requisition charged with this offense, that the expense of such removal would be paid by the county in which the offense is alleged to have been committed. In view of the fact that our laws governing criminal extradition make no mention of the allowance of guards in connection with such removals, I do not feel that it could be said that the \$8.00 fee mentioned by you would automatically apply. However, in practice, if the Governor in his order of extradition authorizes the use of such guards, they should be paid a reasonable fee for their services, and in my judgement, an \$8.00 fee or allowance may be considered reasonable. However, in either event, as I have already pointed out, the expenses of the removal of these persons would be paid from county sources.

Your second inquiry relates to the removal from out of county or state of insanes or juveniles. In the first instance, I do not understand why you would be called upon to return insanes to your county either from another county or from another state. I know of no duty which you have in this

regard nor any authorization for payment of expenses in returning insanes to your county unless they be persons charged with a criminal offense. If this be the case, I feel that the normal laws of criminal extradition would be applicable and you would receive your allowances in conformity with Title 15, Sections 72 and 75, Code of Alabama 1940, as amended. With regard to juveniles, such persons are not to be deemed criminals nor guilty of any criminal offense. However, a suitable allowance may be made by the county for services rendered by the sheriff with respect to performance of duties in connection with the Juvenile Court. In my opinion, if you should be called upon to return from another county or state, by order of your Juvenile Court, a person who is a juvenile, I feel that the county would be permitted to grant you a suitable allowance for your services in this regard which might include the services of a guard, or guards, if such were deemed necessary. Here again, there would be no automatic \$3.00 allowance for such guards but only such amount as might be allowed you by your county governing body. Cf. Quarterly Report of Attorney General, Vol. 66, page 70.

Omitting for the moment your third inquiry and turning to your fourth question, I would beg to advise that I do not know of any conditions under which a person may be extradited from another state merely for investigation of a felony. Our laws on criminal extradition as found set out in Title 15, Sections 48-75, Code of Alabama 1940, relates only to persons who are charged with a criminal offense and not those merely under investigation. As I have pointed out, under these statutes, if the person returned is charged with a felony, the expenses of removal would be paid by the state. If charged with a misdemeanor, these expenses would be payable by the county in which the offense is alleged to have been committed.

Your third inquiry concerns your right to receive a \$1.00 fee for fingerprinting in a criminal case subsequently nol prossed. The requirement of law that persons taken into custody be fingerprinted by the sheriff originated with the passage of Act No. 420, General Acts 1943, page 385. Such requirement is now found in Title 54, Section 38, Code of Alabama 1940 (Pocket Supplement). The fee of 10c for such service, originally provided for by Act No. 420, *supra*, has now been increased to \$1.00 by Act No. 571, Acts of 1955, page 1243, which increase is to be found also in Title 11, Section 100, Code of Alabama 1940, as amended by Act No. 571, *supra*. This, too, would be in the Pocket Supplement of the Code of Alabama 1940.

This office, by former opinion addressed to the Hon. Robert Newman, President of the Alabama Association of Circuit Court Clerks and Registers, under date of May 5, 1959, stated that the sheriff would be entitled to this fee each time he took a person into custody. However, such opinion, making reference to the provisions of Section 5 of Act No. 420, *supra*, noted that such fee is to be taxed only in "criminal prosecutions." The opinion points out that should the sheriff take into custody a person who is subsequently released without charge or through failure of the grand jury to indict him, then the fee allowed for fingerprinting could not be taxed as cost in the case, as no case ever existed. It appears, therefore, that this fee may be taxed as cost only in those instances where a criminal prosecution resulted from the taking into custody of the person fingerprinted. Such rule, I believe, would

be applicable to your inquiry. If charges against the person so fingerprinted have progressed to the point where a criminal case exists against him, either by indictment or otherwise, and such case is subsequently nol prossed, I believe that you would be entitled to your fee. If, however, no criminal case or prosecution has ever resulted and such person is released either by failure of the grand jury to indict or without charge being entered against him, I do not think that it could be said that a criminal case or a criminal prosecution has existed and under such authority, I do not feel that the fingerprinting fee of \$1.00 would attach. I believe that the question of whether or not you are entitled to this fee in cases resulting in a nol pros, depends upon whether or not a criminal case ever existed against such person. If so, then the fact that it was nol prossed should not deprive you of your fee in the matter.

Very truly yours,

MACDONALD GALLION  
Attorney General

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November 6, 1959

Honorable John C. Curry  
Superintendent of Banks  
State Banking Department  
C A P I T O L

Banks and Banking.

Under facts stated, separate tellers' windows on the same lot with a branch bank building, although not a part of the building, but operated as a part of the branch bank business, do not themselves constitute branch banks under Act No. 485, Acts of Alabama 1953, page 613.

Opinion by Assistant Attorney General Clark.

Dear Sir:

Your request for an official opinion bearing date of October 2, 1959, is as follows:

"The Exchange-Security Bank, a State Bank of Birmingham, filed an application with this Department requesting approval of the establishment of a branch bank at Five Points West, in Jefferson County. On February 16, 1959, I approved the application 'for the establishment of such branch on a parcel of land lying in the North East  $\frac{1}{4}$  of the South West  $\frac{1}{4}$  of



Section 5, Township 18, Range 3 West; said parcel being a triangle fronting 161.84 feet along the North line of Third Avenue West, or Bessemer Road and 230.22 feet along the West line of Ensley Avenue and 202.30 feet along the East line of Ray Street or Avenue W, in the City of Birmingham, Jefferson County, Alabama.' Said approval was conditioned upon the Bank making certain increase in its capital structure, which condition has been met.

"At the time of the above approval there were no plans for the building or plot plans showing the location of the building on the parcel of land above described. Subsequent to said approval the Bank furnished a plot plan showing the location of the Bank building and the location of three drive-in tellers' windows on the above described lot, all three windows some distance from the branch bank building, the nearest being about 70 feet and the most removed being approximately 110 feet distant from the Bank building.

"The question now arises as to whether or not such drive-in tellers' windows constitute separate branch banks requiring specific approval within the meaning of the statute authorizing the establishment of branch banks in Jefferson County (Act No. 485—H663, approved September 3, 1953). Said Act seems to classify 'places of business for the receipt of deposits, payment of checks or lending of money—', as branch banks. In an opinion to the Superintendent of Banks, dated November 29, 1956, the Attorney General held 'that it is the intent of the Legislature that the cashing of checks and receiving of deposits is to be regarded as branch banking.'

"In considering the question of whether the three drive-in windows on the same lot with, but some distance removed from the bank building should be classified as separate and additional branch banks, we are informed that neither of the said teller's windows has an enclosed passageway connecting it to the main building for the passage of personnel, either underground, overhead, or at ground level. Neither do such windows have a tube, conveyor, or other device for transferring deposit receipts, cash, or other items of property to or from the main bank building.

"The bank officials point out, however, that the three drive-in windows are located on the same lot under one ownership with streets separating the banking premises from every other business of any kind. They also point out that such drive-in windows are connected to the banking building by continuous paving; by hot and cold water lines from the central plant; by wires of an ADT alarm system; by telephone lines from the central system; by electric lines connected to the central meter on the premises. It is proposed that all bookkeeping for the drive-in windows as well as the branch bank will be handled together.

"Giving consideration to the facts herein stated, please give me the benefit of your opinion as to whether or not the three above described drive-

in tellers' windows constitute branch banks within the meaning of the law authorizing branch banks in Jefferson County."

A review of your request for an official opinion indicates that the proposed branch bank at Five Points West, in Jefferson County, Alabama, is to have a main bank building and three drive-in tellers' windows located on the same parking lot at distances from seventy to one hundred ten feet from the bank building and connected therewith only by the continuous paving, hot and cold water lines, wire from the ADT alarm system, and telephone lines. There is no connecting passageway or device for transferring money or other items to and from the main bank building.

Act No. 485, General and Local Acts 1953, page 613, approved September 3, 1953, provides, in part, as follows:

"Section 1. That from and after the approval of this Act any state bank, whether incorporated or unincorporated, within this State, now or hereafter having a combined paid-in capital and paid-in or earned surplus of more than Five Hundred thousand dollars and situated in a county of which the population according to the last or any subsequent decennial Federal census was in excess of four hundred thousand, shall have power to establish, maintain and operate, within the limits of the county wherein the principal place of business of such bank is situated, one or more branch banks, branch offices, branch agencies, additional offices or branch places of business for the receipt of deposits, payment of checks or lending of money, provided that only one such branch shall be so established, maintained and operated with respect to each hundred thousand dollars by which the amount of combined paid-in capital and paid-in or earned surplus of such bank exceeds Five Hundred thousand dollars and provided further that such bank, before the establishment of any branch or branches, first secure the written consent thereto of the State Superintendent of Banks.

"Section 2. That all laws and parts of laws in conflict with provisions of this Act be and the same are hereby expressly repealed.

"Section 3. This Act shall become effective immediately upon its passage and approval by the Governor or its otherwise becoming a law."

It has been held that where there was an overhead passageway connecting a present bank building with an annex that the annex did not constitute a branch bank under Title 5, Section 125, Code of Alabama 1940. Quarterly Report of Attorney General, Vol. 75, page 14.

It can be readily seen that, in the present instance, an overhead passageway would serve no purpose necessary to the operation of the bank as such. The absence of a tube, conveyor or other device for transferring deposit receipts, cash or other items of property to or from the main building could possibly be construed as inconsistent with safe banking practices.

After carefully considering the matter, I am of the opinion that the three drive-in tellers' windows located on the same lot, connected by continuous asphalt paving, hot and cold water lines, wire from ADT alarm system and telephone lines to the main building, are not branch banks within the meaning of Act No. 485, General and Local Acts 1953, page 613.

Very truly yours,

MACDONALD GALLION  
Attorney General

November 10, 1959

Honorable Bryce Graham  
Circuit Solicitor  
31st Judicial Circuit  
Tusculumbia, Alabama

Costs and Fees — Extradition — Sheriffs.

1. Since passage of Acts No. 539 and 540, Acts of 1957, pages 760 and 761, amending Title 15, Sections 72 and 75 of the Code of Alabama 1940, a Sheriff is entitled to the fees and allowances authorized by Section 72, supra, for returning a person to this State for trial, irrespective of whether such person be returned by means of the Governor's requisition or through waiver and consent on his part and irrespective of whether such person be charged with a felony or a misdemeanor or whether such person be subsequent by convicted of the offense charged.
2. If the offense charged is felony, the fees, allowances and expenses of the Sheriff are payable by the State on certificate of the Governor and warrant of the Comptroller, if a misdemeanor, by the county in which such offense is alleged to have been committed.
3. If the Sheriff concerned is a salaried Sheriff with automotive equipment and operating expense furnished him by the county, he must pay over to the county the \$8.00 fee and mileage allowance paid him by the State in felony removals and should not make claim for these items if the removal is at county expense with a county owned vehicle being used.

Opinion by Assistant Attorney General Hardin.

Dear Sir:

Your request for an official opinion bearing date of July 15, 1959, is as follows:

"By Act No. 642 of the Alabama Legislature of 1957, the Sheriff of Colbert County was placed on a salary in the amount of \$3400 per year in lieu of fees and commissions, etc., by which he had been compensated prior to this act. There are some questions in the mind of the Sheriff, the Chairman of the Board of Revenue, and myself as to what procedure should be followed in compensating the Sheriff or his agents for going outside the State and bringing prisoners back for trial under indictment against them here in Colbert County. As you will note from the provisions of said act the County is supplying the sheriff with all necessary automobiles and expenses of operating the same. We would appreciate your opinion on the following questions growing out of this present situation.

"(1) What procedure should the County Board of Revenue follow in compensating the sheriff or his agents for the expenses including automobile expense, lodging, meals and other items that are necessary when they go outside the State of Alabama and bring a prisoner back to Colbert County by the authority of the governor's requisition, and fugitive warrant?

"(2) What procedure should the Colbert County Board of Revenue follow in compensating the sheriff of Colbert County of his agents for going outside the State of Alabama and returning a prisoner to Colbert County when said prisoner is charged with an offense in Colbert County and where he waives extradition and the Sheriff or his agents have no governor's requisition, fugitive warrant, or any other authority for returning said prisoner.

"(3) Should the Board of Revenue of Colbert County pay the Sheriff or his agents for any necessary expenses in returning a prisoner from out of the State where there is no extradition papers filed, governor's requisition, or fugitive warrant issued, even though said prisoner should be convicted of the offense charged after being returned to the County.

"(4) Should the County compensate the Sheriff of Colbert County or his agents for returning a prisoner from outside the state to Colbert County for prosecution where extradition had been filed, governor's requisition issued and fugitive warrant issued where said prisoner is acquitted after being returned to the County?

"(5) Should the Colbert County Board of Revenue compensate the Sheriff or his agents for returning a prisoner from out the State to Colbert County for prosecution where said prisoner waives extradition, where no governor's requisition or fugitive warrant is issued in the case and where such prisoner is returned by the sheriff or his agents without any extradition authority and where the prisoner is not there after convicted of the offense charged or some lesser including offense?

"(6) Please outline what items of expense the County Board of Revenue is entitled to pay over to the sheriff or his agents in returning a prisoner from out of State for prosecution for an offense here in Colbert County

and outline the procedure that should be followed by the Sheriff's Office, the Colbert County Board of Revenue and the appropriate state agents in making this compensation and in assuring the County Board of Revenue that such expense will be paid over to them by the State of Alabama?"

I find two statutes which are pertinent to your inquiry. The first of these is Title 15, Section 72, Code of Alabama 1940, as amended by Act No. 539, Acts of 1957, page 760 and the second is Title 15, Section 75, Code of Alabama 1940, as amended by Act No. 540, Acts of 1957, page 761. The first of these statutes relates to the compensation, fees, or other allowance payable to the Sheriff when a prisoner is returned to this State for trial by means of extradition proceedings and the requisition of the Governor of this State. Under such circumstances the fees, allowances and compensation of the sheriff is payable by the State on the certificate of the Governor and the warrant of the Comptroller, if the crime with which the prisoner is charged constitutes a felony. If the crime with which the prisoner is charged is a misdemeanor only, then such fees, allowances or compensation is paid out of the treasury of the county wherein the crime is alleged to have been committed.

The second of such statutes, Section 75, as amended, *supra*, concerns those instances in which a prisoner is returned to this State by a sheriff without benefit of requisition of the Governor but through the waiver or consent of the prisoner so returned. Prior to the amendment of 1957, the sheriff was entitled to his fees or allowances under this section only in the event the offense charged constituted a felony and was followed by conviction of the prisoner returned. The 1957 amendment abolished this distinction entirely and such section now applies to both felonies and misdemeanors alike and is now applicable irrespective of whether there be a conviction of the prisoner apprehended. In essence, since the amendments of 1957 to the above statutes, there is little or no distinction between those cases in which a prisoner is returned by means of the Governor's requisition and those in which there is a waiver or consent on the part of the prisoner returned. In either case, if the offense charged constitutes a felony, the fees and allowances of the sheriff are payable by the State on the certificate of the Governor and warrant of the Comptroller. In all other cases such fees and allowances are payable by the county in which the crime is alleged to have been committed.

Turning now to your specific case, that of Colbert County, I must consider that the sheriff of such county is compensated on a salaried basis and has furnished to him automobile equipment and the expenses of operating same. I must consider too that all fees which accrue to him are not for his personal benefit but are to be paid into the treasury of the county. With these premises in mind, I turn to answer the six specific questions presented by your request for opinion.

Your first inquiry relates to the fees and allowances payable by the county in those cases where the sheriff returns a prisoner to Colbert County

from out of state by authority of the Governor's requisition. As pointed out above, if the offense charged is a felony, all such fees and allowances will be payable by the State of Alabama on certificate of the Governor and warrant of the Comptroller. These are set out in Section 72, *supra*, and consist of an \$8.00 per day fee or allowance while going to and returning from the place where the prisoner is confined and actual necessary expenses, including expenses of transportation. If commercial transportation is used the actual cost of same is allowed and if the trip is made in the personal car of the returning officer such person is reimbursed at the rate of 10c for each mile traveled. In view of the fact that the sheriff of your county is a salaried sheriff and has furnished to him his automotive equipment and operating expenses thereof, I do not feel that he should retain this 10c per mile allowance if such trip is made in a car owned by the county at the county expense. I feel that the sheriff should make claim for such mileage allowance from the State but should pay same into the county treasury when received. The same would be true with reference to the \$8.00 per day fee or allowance accruing to him. I feel that claim for this allowance should be made of the State but that when received this money should be paid over to the county treasury. The reimbursement received by the sheriff from the State for the other actual and necessary expense incurred by him in returning such prisoner should be claimed by the sheriff from the State and retained by him as his reimbursement of such expenses.

If the offense with which the prisoner is charged constitutes a misdemeanor and such prisoner is returned by virtue of the Governor's requisition, I feel that the county should make reimbursement to the sheriff of amounts expended by him for actual necessary expenses, not including cost of transportation if a county car was used. I do not feel that the county should allow the sheriff the \$8.00 per day fee or allowance as he is already compensated on a salary basis. Consequently, all that he should claim from the county would be reimbursement for his actual necessary expenses over and above the cost of transportation, if a county owned vehicle is used. If not, then he should receive the actual cost of commercial transportation or the mileage allowance provided for if his personally owned automobile is used.

Your second inquiry pertains to the compensation to be allowed by the county when a prisoner is returned by the sheriff on a waiver of extradition and no Governor's requisition was issued. As I have pointed out the 1957 amendments to the two statutes here considered abolished any distinction between these two type cases, and consequently I feel that the sheriff should be entitled to the same fees and allowances as set out in answer to your first question.

Your third inquiry relates to the question of whether the county should pay the sheriff or his agents for expenses incurred in returning a prisoner from out of state without the Governor's requisition, even though such prisoner subsequently should be convicted of the offense charged. Here again, as I have pointed out, prior to 1957 it was necessary that there be a conviction in order for the sheriff to make his claims for fees

or allowances if he returns such prisoner without the Governor's requisition. However, since the amendments of 1957, no such requirement exists and the sheriff would be entitled to the fees and allowances which I have set out in reply to your first inquiry irrespective of whether he acts pursuant to the Governor's requisition and whether or not there be a conviction of the prisoner returned.

Your fourth inquiry concerns the question of whether the sheriff may make claim for fees and allowances for the return of a prisoner under the Governor's requisition, if such prisoner is subsequently acquitted after being returned to the county. The answer to this question is in the affirmative. Section 72, as amended, *supra*, relating to those cases in which the prisoner is returned by virtue of the Governor's requisition, does not require that there be a conviction of the returned prisoner as a prerequisite to the sheriff making claim for his fees and allowances. Consequently, the sheriff would be entitled to his fees and allowances under the conditions set out in the answer to your first inquiry.

Your fifth question concerns whether the county may compensate the sheriff or his agent, for returning a prisoner from out of state to Colbert County for prosecution where extradition is waived and no Governor's requisition is issued and the prisoner is not thereafter convicted of the offense charged or any lesser included offense. Here again, I refer you to my answers to your previous questions pointing out that Section 75, as amended, *supra*, now has application to both felonies and misdemeanors alike, and likewise does not require that there be a conviction of the person apprehended in order for the sheriff to make his claim of his fees and allowances. Consequently, under the conditions set out in your fifth inquiry, the sheriff would be entitled to the fees and allowances allowed by law under the conditions set out in answer to your first inquiry.

I believe that I have given answer to your sixth inquiry through my answers to your previous questions. To summarize, the State of Alabama will pay to the sheriff or his agent, on the certificate of the Governor and warrant of the State Comptroller, those fees, allowances and compensation set out in Title 72, as amended, *supra*, in those cases where a prisoner is returned to this State, either by means of the Governor's requisition or through waiver of extradition and consent of the prisoner, if the offense charged constitutes a felony. It is not necessary in either instance that the returned prisoner be subsequently convicted. The county will pay to the sheriff or his agent the fees, allowances or compensation allowed by law in those instances where the prisoner is returned to the county by the sheriff either with or without the Governor's requisition, if the offense charged constitutes a misdemeanor. Here again, it is not necessary that the prisoner be subsequently convicted.

With respect to Colbert County and the salaried sheriff thereof, I again refer you to my answer to your first inquiry and again advise that if claim is made of the State by the sheriff for the fees and allowances accruing to him, the sheriff should claim those fees and allowances set out in Section

72, as amended, *supra*, but that he should pay over to the county the \$8.00 per day fee allowed him and also the mileage allowance collected by him if he used a county vehicle at county expense in returning such prisoner.

Very truly yours,

MACDONALD GALLION  
Attorney General

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November 12, 1959

Honorable Charles E. Rentz  
Clerk of the Circuit Court  
Marengo County  
Linden, Alabama

Costs and Fees—Clerks of Circuit Courts.

1. If claim is made of the State under Title 45, Section 69, Code of Alabama 1940, as amended, for the costs accruing in a county court case, and such defendant subsequently makes payment of the costs taxed against him, the full amount collected from or paid by the defendant should be remitted to the State, even though such prisoner is confined in the county jail rather than the State Penitentiary.

Opinion by Assistant Attorney General Hardin.

Dear Sir:

Your request for an official opinion bearing date of August 17, 1959, is as follows:

"Please advise if in County Court cases sentenced to hard labor for costs, costs bills mailed to state and state pays same, and at a later date the defendant pays said costs, if the costs accruing under Title 11, Section 87, for taking affidavit of complaint and issuing warrant of arrest \$1.00 and for Trial, entering judgment, etc., \$5.00 or a total of \$6.00 (which defendant would have to pay, but the State does not), if in making refund to the State would I forward the total costs paid by defendant, to the State or would I refund to them, costs paid by them only, and pay to County the \$6.00 due the County under Title 11, Section 87?

"Example: Cost due and payable by defendant. Clerk, \$5.00, Sheriff \$10.00, Witness fee \$5.00, Solicitor fee \$10.00, Trial fee, etc., \$6.00 or a total of \$36.00.



"Costs State will pay: Clerk \$5.00, Sheriff \$10.00, Witness fee \$5.00, Solicitor fee, \$10.00 or a total of \$30.00.

"The defendant pays \$36.00 the State pays only \$30.00. Should the State be refunded the \$30.00 paid by them or the \$36.00 paid by the defendant.

"Title 11, Section 87, states in part that fees taxed for services performed by the judge of the County Court belong to the County."

Your request presents a situation in which the items of costs assessed against the defendant exceed those which will be paid by the State under the provision of Title 45, Section 69, Code of Alabama 1940, as amended by Act No. 542, Acts of 1957, page 762. The particular example set out in your request refers to a trial held in the county court and concerns the costs accruing to the officers of such court under the provisions of Title 11, Section 87, Code of Alabama 1940. I call to your attention the fact that this latter statute has been superseded as to the costs allowable to the circuit clerk, if acting as the ex officio clerk of such court, by Act No. 741, Acts of 1957, page 1170. I might add that the situation which you present is not an unusual one, as there are many instances in which the costs taxed against the defendant in any particular criminal proceeding exceeds that which is payable by the State under Title 45, Section 69, as amended, *supra*. You inquire as to whether under such a situation the costs having been paid by the State under Title 45, Section 69, *supra*, any subsequent payment by the defendant of the costs involved should be paid over to the State in toto, or only so much thereof as has been paid by the State under the provisions of Title 45, Section 69, *supra*.

Prior to 1957, this office by a long line of opinions has held that once a defendant sentenced for costs had commenced serving such sentence by being delivered to the penitentiary and claim had been made of the State under the provisions of Title 45, Section 69, *supra*, for the items of costs allowed by such statute any subsequent collection of costs from the defendant belonged in full to the State and should be remitted to the State in the total amount collected from the defendant. This would be true even though the amount collected from the defendant subsequent to payment by the State under Title 45, Section 69, *supra*, exceeded the amount so paid by the State under this statute. These opinions seem to hold that once the mandates of Title 45, Section 69, *supra*, have been invoked, the State becomes entitled to all costs subsequently paid by such defendant. Biennial Report of Attorney General, 1928-30, page 537; Quarterly Reports of Attorney General, Vol. 4, page 144; Vol. 6, page 19; Vol. 14, page 7; and Vol. 17, page 175. These opinions seem to be founded on the theory that under the then existing law a county was authorized to contract with the State for the State to receive, care for, and work county prisoners, and that in return the officers of the court were to receive the amounts allowed them under Title 45, Section 69, *supra*. The reasoning of such opinions was based on the fact that under such contracts the officers of the court only received the amounts allowed by Title 45, Section 69, *supra*, and any costs subsequently collected from the defendant were payable to the State of Alabama.

This situation remained the same until 1957. During the legislative

session of that year, Acts No. 60 and No. 61, found on page 100, Acts of 1957, were enacted into law. Act No. 61, *supra*, amends the provisions of Title 15, Section 325, Code of Alabama 1940, relating to legal punishments, by providing that hereafter:

“ . . . in all cases in which the period of imprisonment in the penitentiary or hard labor for the county is more than two years, the judge must sentence the party to imprisonment in the penitentiary; and in all cases of conviction for felonies, in which such imprisonment or hard labor is for more than twelve months, and not more than two years, the judge may sentence the party to imprisonment in the penitentiary, or confinement in the county jail, or to hard labor for the county, at his discretion, any other section of this code to the contrary notwithstanding; and in all cases in which the imprisonment or sentence to hard labor is twelve months or less, the party must be sentenced to imprisonment in the county jail, or to hard labor for the county. Provided, however, no misdemeanor prisoner may be sentenced to the penitentiary.”

Consequently, it is obvious that cases now exist in which a defendant may not be sentenced to the penitentiary, and, therefore, the authority of the counties to contract with the State for the State to receive, care for, and work county prisoners no longer exist. In fact, Section 3 of Act No. 61, *supra*, specifically abolishes the authority of the counties to so contract with the State. The question thus arises as to whether or not the repeal of this authority would serve to change the rule of law relative to the payment to the State of any costs collected from a defendant, subsequent to the time a claim has been made of the State for the payment of costs under the terms of Title 45, Section 69, as amended, *supra*.

To determine this question, it is necessary to examine the provisions of Act No. 60, *supra*, as they amend Title 45, Section 72 of the Code of Alabama 1940. This particular statute relates to the manner in which claim for and collection of costs under the authority of Title 45, Section 69, as amended, *supra*, is to be accomplished. Act No. 60, *supra*, provides, in part, that:

“ . . . No costs shall be paid, until the convict has been delivered to the penitentiary or to the county jail, and, where a convict is sentenced in more than one case, the costs in the succeeding cases shall be paid when he is delivered to such officials. Provided, however, that when the presiding judge sentences a prisoner to the county jail or to hard labor for the county, and certifies to the Board of Corrections that the prisoner has been committed to the county jail, costs must be paid, as required by law, the same as if the convict had been delivered to the penitentiary.”

It is my interpretation of the above-quoted portion of Act No. 60, *supra*, that such merely provides that costs may be paid by the State irrespective of whether the prisoner is confined in the county jail or the State penitentiary. It is also provided that once it is certified by the Presiding Judge of the court sentencing such prisoner that he is confined to the county jail or

to hard labor for the county, costs must be paid by the State in the same manner as if the convict had been delivered to the penitentiary. This being true, it is my opinion that the fact that certain prisoners may not be now sentenced to the penitentiary but must be confined in the county jail is not sufficient to overturn the prevailing opinions of this office over the past years relative to the payment to the State of costs subsequently collected from such prisoners. Accordingly, I advised that, in my opinion, if claim has been made of the State under the authority of Title 45, Section 69, as amended, *supra*, for costs accruing in a case determined in the county court, and such defendant subsequently makes payment of the costs taxed against him, that the full amount collected from or paid by such defendant should be remitted to the State of Alabama even though this amount exceeds that which was collected from the State under the authority of Title 45, Section 69, as amended, *supra*.

Very truly yours,

MACDONALD GALLION  
Attorney General

November 23, 1959

Honorable William Roy Livingston  
Chairman  
Board of Registrars  
Hale County  
Havana, Alabama

Board of Registrars—Compensation—Mileage.

There is no provision of law authorizing the payment of a mileage allowance to members of the Board of Registrars for traveling to and from the precincts of the county in connection with their duties.

Opinion by Assistant Attorney General Hardin.

Dear Sir:

Your request for an official opinion bearing date of November 4, 1959, is as follows:

"There seems to be a difference of opinion as to whether the Board of Registration is to be paid mileage for going to various beats in this county, to hold registration as prescribed by law.

"It seems that in all fairness, the members of the Hale County Board should be paid this mileage. We would greatly appreciate your early ruling."

It is provided by Title 17, Section 26, Code of Alabama 1940, as amended, that the Board of Registrars in each county shall visit each precinct in the county at least once and more often if necessary between October 1 and December 31 during each odd numbered year for the purpose of registering persons residing in such precinct. It is further provided that the time consumed by the Board in completing such precinct registration shall not exceed thirty working days in any county, with certain exceptions not here pertinent. In your request, you inquire as to whether the members of the Board of Registrars might be paid a mileage allowance for traveling to and from the various precincts under the requirements of the above statute.

In my opinion, your inquiry must be answered in the negative. The compensation of members of the Board of Registrars is provided for by Title 17, Section 24, Code of Alabama 1940, as last amended by Act 874, Acts of 1951, Page 1512. Under the provisions of this amended statute the members of the Board of Registrars are to receive Ten Dollars (\$10.00) per day to be paid by the State and disbursed on order of the Judge of Probate for each day's attendance upon sessions of the Board. This is the only provision which I find relating to the compensation to be allowed such members, and it does not appear to me that such statute makes any provision for the payment of a mileage allowance for the travel of such members to and from the precincts of the county.

This conclusion is supported by a former opinion of this office found in Biennial Report of Attorney General, 1930-1932, page 464 which is to the same effect. Such opinion considered the statute which was the predecessor to the present provisions of Title 17, Section 24, as amended, *supra*, and concludes with the observation that such statute made no provision for reimbursement for traveling expenses. I see no material difference in the statute as it existed at the time of such opinion and as it exists today, and consequently, I must advise that there is no provision of law authorizing the payment of a mileage allowance to members of the Board of Registrars for traveling to and from the precincts of the county in connection with their duties.

Very truly yours,

MACDONALD GALLION  
Attorney General

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November 30, 1959

Mrs. Josephine J. Golden  
Clerk, Circuit Court  
Crenshaw County  
Luverne, Alabama

Costs and Fees—Clerks of Circuit Courts—Crenshaw County.

Costs and fees accruing to the clerk for services rendered in the Law and Equity Court of Crenshaw County discussed generally.

Opinion by Assistant Attorney General Hardin.

Dear Mrs. Golden:

Your request for an official opinion bearing date of September 19, 1959, is as follows:

"I would like to request an official opinion as applies to Section 4 of Act No. 132, approved August 25, 1959, Code of Alabama, pertaining to be charged by Circuit Court Clerks who are Ex-Officio Clerks of Law and Equity Courts.

"He shall be subject to the same pains and penalties with regard to the duties of the office and shall be entitled to the same fees, commissions and emoluments as are now or as may hereafter be allowed to Circuit Clerks of Alabama, which shall be collected as such fees and commissions are collected in the Circuit Courts, except that in civil matters where suit is brought for one hundred dollars (\$100.00) or less, and in criminal matters heretofore triable before justices of the peace, only the fees and commissions allowed by law to justices of the peace shall be collected."

"Title 11, Section 89(2), Code of Alabama 1940, in the 1957 Supplement sets the following fees to be collected by Circuit Court Clerks who are Ex-Officio Clerks of County Courts, Law and Equity Courts, etc.:

"In all criminal or quasi criminal cases docketed in County Courts, Law and Equity Courts or Courts of like jurisdiction in the State of Alabama where the Circuit Court Clerk is Ex-Officio Clerk of said Court, the following schedule of costs shall be taxed for said clerks:

"For each misdemeanor case originating by affidavit when the defendant pleads guilty ----- \$5.00

For each misdemeanor case originating by affidavit when the defendant is tried ----- \$7.50

For each misdemeanor case originating by affidavit when the case is nolle prossed or otherwise dismissed ----- \$5.00

In addition to the above costs, when the case is continued at the request of the defendant, to be charged but one time in any one case ----- \$1.00

In all cases tried and appealed to the Circuit Court ----- \$7.50

On preliminary hearing in felony cases ----- \$5.00

In all forfeiture cases ----- \$7.50

"My question is: Does the same fees as are set out in Title 11, Section 89(2), Code of Alabama 1940 as amended in 1957 Supplement, apply in the Law and Equity Court to be organized on the 1st day of October, 1959, in Crenshaw County, Alabama, or will the fees set out in that Court Act No. 132, Section 4, apply?

"Due to the fact that the Law and Equity Court of Crenshaw County, Alabama, is to be organized on the 1st day of October, 1959, I would like an official opinion on this matter as soon as possible."

The Law and Equity Court of Crenshaw County was created by Act No. 132, Acts of Second Special Session, 1959, being approved by the Governor on August 25, 1959. The provisions of such Act became effective on October 1, 1959. Section 4 of Act No. 132, supra, is that portion of such act which is pertinent to your inquiry, and the provisions of this section are as follows:

"The clerk of the circuit court of the county shall be by virtue of his office clerk of the Law and Equity Court of Crenshaw County hereby established, and shall have the same powers and discharge the same duties as clerks of the circuit courts. He shall be subject to the same pains and penalties with regard to the duties of the office and shall be entitled to the same fees, commissions and emoluments as are now or as may hereafter be allowed to circuit clerks of Alabama, which shall be collected as such fees and commissions are collected in the circuit courts, except that in civil matters where suit is brought for one hundred dollars (\$100.00) or less, and in criminal matters heretofore triable before justices of the peace, only the fees and commissions allowed by law to justices of the peace shall be collected. The register of the circuit court in equity shall by virtue of his office be the register of the Law and Equity Court of Crenshaw County, and shall have powers and discharge the duties which shall devolve upon the register of the Law and Equity Court of Crenshaw County. He shall be subject to the same pains and penalties with regard to the duties of the office and shall be entitled to the same fees and commissions as are now, or as may hereafter be allowed to the registers of circuit courts in equity, which shall be collected as such fees and commissions are collected in circuit courts. No costs or fees shall be charged or collected in juvenile cases."

You inquire as to the fees that should be taxed for the benefit of the Clerk in those cases disposed of in the above-mentioned Law and Equity Court of Crenshaw County.

It is to be noted from the above quoted provisions of Section 4 of Act No. 132, supra, that the Clerk of the Circuit Court of Crenshaw County is likewise to serve as the Clerk of the Law and Equity Court of Crenshaw County. With reference to the fees and allowances accruing to such clerk for his or her services in this inferior court, it is provided that such Clerk shall be entitled to the same fees, commissions and emoluments as are now or as may hereafter be allowed to circuit clerks of Alabama. There are two exceptions to this general rule, these being that in civil matters where the amount in controversy is One Hundred Dollars (\$100.00) or less and in criminal matters heretofore triable before justices of the peace, the clerk shall only be allowed those fees or compensations accruing to justices of the peace for similar services. It, therefore, appears to me that in giving answer to your inquiry I must condition same upon the type case in which the services in question were rendered.

Considering first of the fees or commissions which are allowable in civil cases, I would advise that, if the amount in controversy is One Hundred Dollars (\$100.00) or less, you would only be entitled to those fees which are allowable to justices of the peace for rendering similar services in such type cases. For the services rendered by you in civil matters when the amount in controversy is more than One Hundred Dollars (\$100.00), I would advise that the schedule of fees provided for clerks of circuit courts, as found set out in Act No. 740, Acts of 1957, page 1169 would be applicable.

With respect to the fees or compensations allowable in criminal cases disposed of in the Law and Equity Court of Crenshaw County, I would advise that, if the case in question be one which was formerly triable before a justice of the peace, you would only be entitled to the fees and commissions allowed by law to justices of the peace for services in similar type cases. On the other hand, if such criminal cases involved any offense other than one formerly triable before a justice of the peace, I feel that the provisions of Act No. 741, Acts of 1957, page 1170, would have application to the services rendered by you. As you are perhaps aware, Act No. 741, supra, made provision for a fixed amount of costs for clerks of circuit courts who are ex-officio clerks of county courts, law and equity courts, and courts of like jurisdiction in criminal and quasi cases. In view of the fact that you, as Clerk of the Circuit Court, likewise serve as the Ex-Officio Clerk of the Law and Equity Court of Crenshaw County, I feel that for your services in those criminal cases, other than those heretofore triable before a justice of the peace, you would be entitled to the fees provided for by Act No. 741, supra.

I realize that this latter holding differs from that rendered other clerks of the circuit courts who serve as ex-officio clerks of the inferior courts of their county. In those instances heretofore considered by this

office we were dealing with inferior courts which were created prior to passage of Act No. 741, supra. Under such conditions it was held that the repealer clause found in Section 2 of Act 741, supra, together with the provision of Section 4 of such act providing that same should become effective in each county, were sufficient to supersede any inconsistent provisions existing in local or special acts relating to inferior courts previously established. However, we have here a different situation. In this instance, we are dealing with an inferior court which was created subsequent to the passage of Act No. 741, supra, and consequently, I feel that effect must be given to the provision of Act No. 132, supra, with respect to the fees allowable to the clerk for services in such court.

Although not raised by your inquiry, I presume that you are interested in the fees or commissions to which you are entitled as Register of the Law and Equity Court of Crenshaw County. It is to be noted that Section 4 of Act No. 132, supra, provides that you shall be entitled to the same fees and commissions as are now, or as may hereafter be allowed to the registers of Circuit Courts in Equity. This being the case I feel that the fees provided for by Act No. 742, Acts of 1957, page 1171, would have application to services performed by you as Register of the Law and Equity Court of Crenshaw County.

Very truly yours,

MACDONALD GALLION  
Attorney General

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December 15, 1959

Honorable Homer McLemore, Chairman  
Board of Revenue  
Limestone County  
Athens, Alabama

Sheriffs — Counties — Prisoners — Limestone County

1. All prisoners in the county jail are fed at the expense of the State in accordance with the provisions of Title 45, Section 144, Code of Alabama 1940, as amended by Act No. 362, Acts of 1957, page 477.
2. The Sheriff of Limestone County has the duty of procuring, preparing, and serving food to the prisoners in the county jail for which he receives the allowances provided by Title 45, Section 144 and 145, supra.
3. Any excess expenditures by the Sheriff over and above



the allowances made by law for these purposes is his own responsibility and cannot be paid by the county.

Opinion by Assistant Attorney General Hardin.

Dear Sir:

Your request for an official opinion bearing date of October 13, 1959. is as follows:

"The Sheriff is allowed 60c per day for food for the prisoners. Since they are working on the county roads they need more food. The county prisoners are returned to the jail every day for lunch. I'm asking for an opinion on the following questions:

"(1) If the county can pay the Sheriff the difference in 60c and the proper amount of food it takes for working men?

"(2) If your answer to question No. 1 is yes, from what funds should it be paid?

"(3) If your answer to question No. 1 is no, can the county buy food to be prepared by the Sheriff to feed said prisoners at the county jail?"

From my examination of the local laws applicable to your county, I find that the Sheriff of Limestone County is compensated on a fee basis. Although certain of the other officers of Limestone County are now compensated on a salary basis, it is provided by Act No. 355, Acts of 1953, page 423, that the sheriff of such county shall be compensated on a fee basis and shall be entitled to all the fees, percentages and allowances provided for sheriffs under the general laws of the State of Alabama. It is further provided by Section 2 of Act No. 355, supra, that the Sheriff of Limestone County shall be responsible for the costs of feeding prisoners and operating his office as are other sheriffs who are compensated on a fee basis, all as is provided for by the general laws of the State of Alabama. Act No. 355, supra, has been subsequently amended but such amendments are in no-wise pertinent to the question here considered.

In view of the above, consideration must be given to the provisions of Sections 144 and 145 of Title 45, Code of Alabama 1940. Section 144, supra, was last amended by Act No. 362, Acts of 1957, page 477 and now provides that:

"Food for prisoners in the county jails shall be paid for by the state as follows: There shall be allowed such amount as is actually necessary for food for each prisoner daily, but the said amount so allowed cannot exceed sixty cents per capita."

Section 145, *supra*, provides for an allowance to be received by the sheriffs of the several counties as compensation for their services in preparing and serving food and rendering other services incident to feeding prisoners.

Prior to the passage of Act No. 362, *supra*, there existed a third statute, namely, Title 45, Section 76, Code of Alabama 1940, which provided that the county governing body should make provision out of the county treasury for suitable food, clothing, lodging, medicine and medical attention for such of the convicts as were sentenced to hard labor for the county. However, this aforementioned Section 76 was repealed outright by Act No. 362, *supra*. Even prior to such repeal, however, it had been held by a former opinion of this office found in Quarterly Report of Attorney General, Volume 33, Page 93, that allowances provided for by Sections 144 and 145, *supra*, were applicable to both state and county prisoners. Hence, it appears that even prior to the passage of Act No. 362, *supra*, there was no distinction, insofar as feeding is concerned, between state and county prisoners confined in the county jails. Certain it is, that since the passage of Act No. 362, *supra*, and the specific repeal of Section 76, *supra*, it cannot be said that any such distinction exists and the allowances accruing to sheriffs for the feeding of prisoners is now controlled by Section 144, as amended, *supra*.

With the above observations in mind, I must advise, with reference to your first question, that in my opinion, the county is not authorized to pay to your sheriff any excess over and above the sixty cents per capita paid by the State, expended by the sheriff in the feeding of prisoners.

Having answered your first question in this manner, it is unnecessary that I give answer to your second inquiry. It is my further opinion that the same answer must be given to your third question, that is, that the county may not buy food to be prepared by the sheriff to feed prisoners in the county jail. *Holcombe v. Mobile County*, 26 Ala. App. 151, 155 So. 638, cert. denied 229 Ala. 77, 155 So. 640.

I am not unmindful of the opinion of this office reported in Quarterly Report of Attorney General, Volume 60, page 59, but would note the fact that such opinion is based solely upon the local act governing the operation of such office which was applicable only to the county concerned.

Very truly yours,

MACDONALD GALLION  
Attorney General

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December 28, 1959

Honorable Dewayne N. Morris  
Chairman, Board of Equalization  
Jefferson County  
601-5 Court House  
Birmingham 3, Alabama

Taxation — Ad Valorem Taxes — Notices — Assessments

1. Notice to person in whose name property assessed is notice to subsequent purchaser.
2. Title 51, Section 55, Code of Alabama 1940, which relates to assessment of property generally is applicable to Chapter 8, Title 51, Code of Alabama 1940, which relates to unit system of assessment of real estate.
3. Meaning of words "notice" and "Taxpayer" as appears in Title 51, Section 55, Code of Alabama 1940 discussed.

Opinion by Assistant Attorney General Payne.

Dear Sir:

Your request for an official opinion bearing date of December 1, 1959, is as follows:

"Please give us your opinion as to the meaning of words 'notice' and 'taxpayer' where they appear in the following excerpt from Section 55 of Title 51, Code of Alabama, 1940, as amended.

"'Provided, however, that the taxpayer shall have the right any time before the taxes become delinquent to appear before the County board of equalization and have the assessment of his property reopened, if satisfactory proof is made that the taxpayer or his agent did not receive notice of such increase.'

"1. Is notice to the person in whose name the property is assessed considered notice to a subsequent purchaser who, by agreement, must pay the ad valorem taxes which become due the following October 1?

"2. Does Chapter 8 of Title 51 (wherein the unit system of assessment is provided for) make the above proviso inapplicable to Jefferson County?"

A study of Title 51, Section 55, Code of Alabama 1940, and related sections, indicates to me that the word "notice" as appears in said section

means that notice to the taxpayer required when there has been some change in the valuation of the property assessed different from the preceding years valuation for assessment purposes; or where there has been added additional items of taxable property by the tax assessor to the list returned by the taxpayer; and when there has been a disallowance by the tax assessor of claimed exemptions as to certain items of property. The various laws pertaining to assessment of ad valorem taxes in this State together with State Appellate Court decisions upon the subject leads me to the conclusion that the word "taxpayer" as appears in Section 55, *supra*, means the party upon whom the law impose the primary liability to pay the tax. This liability is determined as of October 1, of any given year.

I turn now to your specific questions numbered 1 and 2. Question numbered 1 necessarily presupposes "notice" in due course to the person in whose name the property was assessed. Therefore, at the time the property was subsequently purchased, there was no duty imposed by law to give notice other than to the person listing the property for taxation as the owner. Your question is accordingly answered in the affirmative.

Your question numbered 2 is answered in the negative. While Chapter 8, Title 51, Code of Alabama 1940, is applicable only to the assessment of **real estate**, there are no provisions contained therein indicating in the least that the taxpayer or his agent may not reopen the assessment of his property under appropriate circumstances. Such right to "reopen" would seem clearly to come within the spirit and intent of Chapter 8, *supra*, since provision is there made (Section 82, Title 51, Code, *supra*) for notice to the taxpayer in the event of an increase in the property assessment. Referring to the act which now appears as Chapter 8, Title 51, *supra*, the Supreme Court in *Dearborn v. Johnson*, 234 Alabama 84, 173 So. 864, 868, observed:

"The act here in question only repeals so much of the general Revenue Code as conflicts therewith, leaving unaffected those applicable provisions not specifically treated. The act is in fact auxiliary to the Revenue Code."

Accordingly, the "proviso" to which you refer would be applicable to Jefferson County.

Very truly yours,

MACDONALD GALLION  
Attorney General

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December 31, 1959

Honorable G. C. Brittain  
Judge of Probate  
Calhoun County  
Anniston, Alabama

Filing Tax — Credit Unions

Credit Union created under Title 28, Sections 282-303 is exempt from mortgage privilege tax.

Opinion by Assistant Attorney General Loeb

Dear Sri:

Your request for an official opinion bearing date of December 9, 1959, is as follows:

"We have a credit union in a local manufacturing plant here in Anniston that was organized and chartered under the laws of Alabama. This credit union makes loans to its members and takes a chattel mortgage on some piece of personal property, in most instances an automobile. The credit union loans only to its members. These mortgages are filed in the Probate Office as other mortgages.

"Title 28, Section 302 states: 'A credit union shall be deemed an institution for savings and, together with all the accumulations herein, shall not be subject to taxation except as to real estate owned, as to the franchise tax required of other corporations, and as to the excise tax required of financial institutions. The shares of a credit union shall not be subject to taxation or to a stock transfer tax when issued by the corporations or when transferred from one member to another. (Ib.; 1939, p. 56.)'

"I want to know if I should charge mortgage tax as provided for in Title 51, Section 619, on these instruments at the time they are filed for record. The representative of the credit union filing the mortgage is of the opinion that they should be exempt from this mortgage tax under the provisions of the above Title 28, Section 302.

"If it is possible I would like to have as early a reply as you can conveniently give us because the union in question wishes to record contracts that are already existing."

Assuming that the credit union to which you refer is created under the provisions of Title 28, Sections 282-303, Code of Alabama 1940, it is my opinion that such credit union would be exempt from the mortgage

privilege tax levied by Title 51, Section 619, as amended, Code of Alabama 1940. Title 28, Section 302, *supra*, seems to clearly express a Legislative intent that such credit unions be exempt from all taxation except as to real estate owned, franchise tax, and excise tax on financial institutions.

Very truly yours,

MACDONALD GALLION  
Attorney General

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December 31, 1959

Honorable Winston Stewart  
Executive Secretary  
Association of County Commissioners of Alabama  
17 South Union Street  
Montgomery 4, Alabama

Elections — Voters — Registration

1. The registration list furnished the inspectors constitutes satisfactory evidence of the qualification of a voter, but the absence of the voter's name thereon does not preclude the right of the voter to show by other evidence that he is in fact a registered voter.
2. The registration list constitutes evidence of registration, but is not the sole method of proving qualification to vote.

Opinion by Assistant Attorney General McQueen.

Dear Sir:

I have your request for an official opinion bearing date of December 3, 1959, which is as follows:

"I would like to have your opinion on the following:

"A constitutional Amendment Election is to be held February 16, 1960. Many potential voters will pay their poll tax between October 1, 1959 and February 1, 1960. It is the duty of the probate judge to prepare and furnish the election officials with a qualified list of voters. Although the tax collector does not turn his poll tax records over to the probate judge until March, will those who have paid all necessary

poll tax be qualified to vote in this election, whether their name appears on the official list or not?"

My answer to your inquiry is in the affirmative.

Section 178 of the Constitution of Alabama 1901 and Title 17, Section 12, Code of Alabama 1940, enumerate those persons entitled to vote in the State of Alabama. After setting out certain residential requirements, both the Constitutions and statute provide that all persons who shall have paid, on or before the first day of February next preceding the date of the election in which they offer to vote, all poll tax due from them shall be entitled to vote in such election.

Title 17, Section 138, Code of Alabama 1940, provides that the judge of probate shall furnish to the election officials immediately prior to all regular elections a correct alphabetical list of all registered voters. This duty is imposed upon the probate judge, and if he so desires he can obtain from the tax collector a record of those persons who have paid poll tax prior to February 1, 1960. This list may be checked against the existing poll list, and new or additional names may be added thereto.

The Opinion appearing in Quarterly Report of Attorney General, Vol. 42, page 41, contains a pertinent statement in regard to the question propounded by you. This statement is as follows:

"It must be kept in mind that all these provisions of law as to lists of registered voters and the delivery of the same to the election official seal to their verity and furnish prima facie evidence of the qualifications of voters. Both the Constitution and the statutes provide that if the person offering to vote possesses all the named conditions at the time he offers to vote he is guaranteed the right to cast it. Neither the Constitution nor the statute requires as a right to vote that his name shall appear on the official list of qualified voters. If he has actually lawfully registered but his name fails to appear on the list of registered voters he may make proof of the fact that he has actually and lawfully registered. This may be done just as any material fact may be shown in a judicial proceeding. If he produces his certificate of registration issued to him by the board of registrars, which is shown to be genuine, this is official prima facie evidence to entitle him to vote. The statute providing for the registration list to be furnished to the inspectors is not an exclusive method of showing the voters' qualification."

In my opinion, the quote from the former opinion of this office contains a correct statement of the law.

You are, therefore, advised that if it is impossible, due to the time element, for the names of all persons who have actually paid their poll tax to appear on the list of qualified electors furnished the inspectors for

the election to be held on February 16, 1960, then in that event such persons, if otherwise qualified, would be entitled to vote by producing evidence to the election officials that they have paid their poll tax.

As pointed out in the opinion hereinabove quoted, the fact that a person's name does not appear on the list of registered voters does not preclude such person from voting in an election; provided he has met all requirements contained in the Constitution and statute in this regard.

Very truly yours,

MACDONALD GALLION  
Attorney General

December 31, 1959

Honorable John C. Curry  
Superintendent of Banks  
State Banking Department  
C A P I T O L

Banks and Banking — Licenses — Corporations.

1. Amendment of corporation's name does not effect change of licensee so as to require new application and fee therefor.
2. Supervisor's endorsement of change of corporation's name on existing license is not a transfer of said license.

Opinion by Assistant Attorney General Clark.

Dear Sir:

Your request for an official opinion, bearing date of December 14, 1959, is as follows:

"In re: Act No. 374 approved November 6, 1959, and described as 'Alabama Small Loan Act.'

"Section 6(a) of the above act is as follows:

"Each license shall state the address at which the business is to be conducted and shall state fully the name of the licensee, and if the licensee is a copartnership or association, the names of the members thereof, and if a corporation, the date and place of its incorporation. Each license shall be kept conspicuously posted in the licensed place of business and shall not be transferable or assignable."



"In several instances where the licensee is a corporation, chartered under Alabama law, the licensee has filed or is about to file an amendment to its charter by which the name of the corporation is to be changed from that used by it at the time license was issued.

"The question arises as to whether or not the Supervisor, upon being furnished with satisfactory evidence that the only change in the corporation is that of its name, may endorse the change of name on the license so as to have the license show the information required by the above quoted part Section 6, or would such an endorsement be in the nature of a transfer which is prohibited by the above quoted section. In order that we may properly deal with these inquiries, will you please give us your opinion upon the following:

"1. If a licensee corporation amend its charter only to extent of changing its name, is it necessary to acquire a new license by filing a new application and paying the fee therefor?

"2. If your answer to the first question is negative, then will the Supervisor's endorsement of the change of name on the existing license be construed as a transfer of the license in violation of Section 6?"

Under the facts stated, and provided such amendment is in conformance with Act No. 289, General and Local Acts 1951, page 573, approved July 26, 1951 (Title 10, Section 18, 1955 Pocket Part, Code of Alabama 1940), my answer to your first question is in the negative.

In an opinion reported in Quarterly Report of Attorney General, Vol. 16, page 124, it is stated:

"It appears that the corporation in question merely changed its corporate name and did not change its financial status or business activities. A change in a corporate name has no more effect upon the corporation's identity than a change of name by a natural person has upon his identity; nor does it affect its rights, or lessen or add to its obligation. *North Birmingham Lumber Co. v. Sims & White*, 157 Ala. 595, 48 So. 84. Therefore said corporation is not liable for a new license."

Such an amendment would not effect a change of the licensee so as to be transfer or assignment of license as prohibited by Section 6(a) of the Alabama Small Loan Act, *supra*.

A mere change in the name of a corporation by amendment is not such a change as would be construed to create a new or different corporation. The endorsement of the supervisor of such a change of the name on the existing license would not be construed as a transfer.

My answer to your second question is, therefore, in the negative.

Very truly yours,

MACDONALD GALLION  
Attorney General

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